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James C. Fuller d/b/a Island City Electric and Local 665, International Brotherhood of Electrical Workers, AFL–CIO. Case 7–CA–46152

August 30, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by the Union on April 21, 2003, the General Counsel issued a complaint on September 29, 2003, against the Respondent, James C. Fuller d/b/a Island City Electric, alleging that it has violated Section 8(a)(1) and (3) of the Act by discharging employee Troy Nealey.

Subsequently, the Respondent and the Union entered into a settlement agreement, which was approved by the Regional Director for Region 7 on January 13, 2004. The settlement agreement required the Respondent to (1) make employee Nealey whole; (2) remove from its files and records any references to Nealey's discharge and advise him in writing that this has been done; (3) post a notice to employees regarding the complaint allegations; and (4) notify the Regional Director in writing what steps the Respondent had taken to comply with the settlement.¹ The agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payments of moneys, and after 15 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Charged Party, the Regional Director shall issue complaint in the instant case. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations alleged therein. Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the

Charged Party to Show Cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether Charged Party defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered hereon ex parte.

By letter dated February 24, 2004, the Regional Director for Region 7 provided the Respondent with conformed copies of the settlement agreement, and copies of the Notice to Employees for posting, including instructions for posting. This letter also requested that the Respondent return to Region 7 three signed and dated copies of the Notice to Employees. By letter dated April 15, 2004, the Regional Director requested that the Respondent cure noncompliance with the terms of the settlement agreement by providing him with copies of the signed and dated Notice to Employees, and confirmation that the notice was posted and that the Respondent had removed from its files and records any references to Nealey's discharge. The April 15 letter further stated that, pursuant to the terms of the settlement agreement, if the Respondent failed to cure its noncompliance by April 30, 2004, the Regional Director would reissue the complaint and file a motion for summary judgment. The Respondent did not thereafter comply with the terms set forth in the Regional Director's April 15 letter. Accordingly, the Regional Director reissued the complaint on June 29, 2004.

On July 21, 2004, the General Counsel filed a Motion for Summary Judgment with the Board. On July 23, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the settlement agreement by failing to

¹ The notice to be posted pursuant to the settlement stated that Nealey had waived his right to reinstatement.

provide the Region with signed and dated copies of the Notice to Employees, and by failing to confirm that it had posted the notice and removed from its files all references to the discharge of employee Nealey. Consequently, pursuant to the provisions of the settlement agreement set forth above, we find that the allegations of the complaint are true.² Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, with an office and place of business at 110 Carlow Drive, Eaton Rapids, Michigan, has been engaged as an electrical contractor in the construction industry, doing residential and commercial construction. The Respondent's Eaton Rapids facility is the sole facility involved in this proceeding.

During the calendar year ending December 31, 2002, the Respondent, in the course of conducting its business operations described above, provided services in excess of \$50,000 to firms within the State of Michigan which are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 665, International Brotherhood of Electrical Workers, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James C. Fuller held the position of the Respondent's owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about April 1, 2003, the Respondent, by its agent James Fuller, discharged employee Troy Nealey. The Respondent discharged Nealey because of his support for, and activities and sympathies on behalf of, the Union and to discourage employees from engaging in these and other protected concerted activities.

CONCLUSION OF LAW

By discharging employee Troy Nealey, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated 8(a)(3) and (1) by discharging Troy Nealey, we shall order the Respondent to offer Nealey full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Nealey whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharge of Nealey, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, James C. Fuller d/b/a Island City Electric, Eaton Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they support Local 665, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Troy Nealey full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make whole Troy Nealey for any loss of earnings and other benefits resulting from his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of

² See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

Troy Nealey, and within 3 days thereafter, notify Nealey in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Eaton Rapids, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 30, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against employees because they support Local 665, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Troy Nealey full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Troy Nealey for loss of earnings and other benefits resulting from his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Nealey, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

JAMES C. FULLER D/B/A ISLAND CITY ELECTRIC